

HONEY D. HERRICK
Claimant

UNITED METHODIST HOME
Respondent

**KANSAS ASSOCIATION OF HOMES
FOR THE AGING INSURANCE GROUP, INC.**
Insurance Carrier

ORDER

ISSUES

- (1) Whether claimant suffered an accidental injury that arose out of and in the course of her employment with the respondent on the dates alleged;
- (2) Whether claimant gave timely notice;
- (3) Whether claimant filed a timely written claim; and,
- (4) Whether the Administrative Law Judge exceeded his jurisdiction in granting claimant's request for medical treatment.

The first three issues raised by respondent are jurisdictional that subjects a preliminary hearing order to Appeals Board review. See K.S.A. 44-534a(a)(2).

The Administrative Law Judge found that the claimant's work activities "... aggravated, accelerated or intensified her Reynaud's [sic] syndrome over the course of about nine years and that on or about January 4, 1994 claimant was taken off the buffer by Dr. O'Callaghan" In its brief, the respondent objects to the Administrative Law Judge finding the date of accident as January 4, 1994. The respondent argues that claimant originally claimed in her Application for Hearing filed on February 7, 1995, that the claimant sustained a work-related accident while employed by the respondent by a series of injuries and a single trauma culminating in an injury on or about November 23, 1993. At the Preliminary Hearing, claimant then alleged a series of accidents up through December 2, 1993. Respondent contends that the Administrative Law Judge exceeded his jurisdiction when he *sua sponte* found a date of accident different than the date claimed by the claimant. The Appeals Board finds, for preliminary hearing purposes, that it is within the Administrative Law Judge's discretion to find a date of accident that conforms to evidence. Accordingly, the Administrative Law Judge, in the case at hand, did not exceed his jurisdiction.

The Appeals Board also affirms the Administrative Law Judge's finding that the claimant suffered an accidental injury that arose out of and in the course of her employment with the respondent. Claimant's testimony, coupled with the medical records, established that it is more probably true than not that claimant's use of the vibrating power buffer aggravated, accelerated or intensified her Raynaud's syndrome.

With respect to timely notice, the Appeals Board finds that the claimant's supervisor, Marcella Weibel, had actual notice that the claimant's work activities with the buffer machine aggravated her pre-existing Raynaud's syndrome condition by virtue of Dr. O'Callaghan's report of January 4, 1994, which recommended that the claimant not use the buffer. As a result of that report, Ms. Weibel thereafter changed the claimant's job duties to eliminate the use of the buffer.

After respondent had notice of claimant's injury, it failed to file an Employer's Report of Accident within twenty-eight (28) days and therefore the time to file a written claim was extended for one (1) year from January 4, 1994. Claimant made demand upon the respondent on November 3, 1994, well within the one (1) year period. See K.S.A. 44-557(c).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Floyd V. Palmer, dated May 8, 1995, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

- c: Seth G. Valerius, Topeka, KS
 Jeffrey A. Chanay, Topeka, KS
 Floyd V. Palmer, Administrative Law Judge
 David A. Shufelt, Acting Director